

1 STATE OF NEW JERSEY
2 BUREAU OF SECURITIES
3 P.O. Box 47029
4 Newark, New Jersey 07101
5 (973) 504-3600

6 In the matter of)

7 U.S. BANCORP PIPER JAFFRAY INC.)
8 800 Nicollet Mall)
9 Suite 800)
10 Minneapolis, Minnesota 55402)
11 CRD # 665,)

CONSENT ORDER

12 Respondent.

13 WHEREAS, U.S. Bancorp Piper Jaffray Inc. (hereinafter "USBPJ") has been registered as a
14 broker-dealer in the State of New Jersey since February 12, 1976; and

15 WHEREAS, coordinated investigations into USBPJ's activities in connection with certain
16 of its equity research and investment banking practices during the period of approximately 1999
17 through 2001 have been conducted by a multi-state task force and a joint task force of the U.S.
18 Securities and Exchange Commission, the New York Stock Exchange, and the National
19 Association of Securities Dealers (collectively, the "regulators"); and

20 WHEREAS, USBPJ has cooperated with regulators conducting the investigations by
21 responding to inquiries, providing documentary evidence and other materials, and providing
22 regulators with access to facts relating to the investigations; and

23 WHEREAS, USBPJ has advised regulators of its agreement to resolve the investigations
24 relating to its equity research and investment banking practices; and

25 WHEREAS, USBPJ agrees to implement certain changes with respect to its equity research
26 and investment banking practices, and to make certain payments; and

WHEREAS, USBPJ voluntarily elects to permanently waive any right to a hearing on this
matter and judicial review of this Consent Order (the "Order") under N.J.S.A. 49:3-58(c);

1 NOW, THEREFORE, the Chief of the Bureau of Securities, as administrator of the Uniform
2 Securities Law (1997), L. 1997, c.276, N.J.S.A. 49:3-47 et seq., hereby enters this Order:

3 **I.**

4 **JURISDICTION/CONSENT**

5 USBPJ admits the jurisdiction of the Bureau of Securities, neither admits nor denies the
6 findings of fact and conclusions of law contained in this Order, and consents to the entry of this
7 Order by the Chief of the Bureau of Securities.

8 **II.**

9 **FINDINGS OF FACT**

10 **A. Background and Jurisdiction**

- 11 1. USBPJ is a broker-dealer with its principal place of business in Minneapolis, Minnesota. The
12 firm engages in a full-service securities business, including retail and institutional sales,
13 investment banking services, trading, and research.
- 14 2. USBPJ is currently registered with the Bureau of Securities as a broker-dealer, and has been
15 so registered since February 12, 1976.
- 16 3. This action concerns the years 1999, 2000, and 2001 (the "relevant period"). During that
17 time, USBPJ engaged in both research and investment banking ("IB") activities.
- 18 4. At various times during the relevant period, USBPJ placed undue emphasis on using its
19 research analysts to maximize opportunities to obtain investment banking revenues from
20 companies in the technology, telecommunications, and biotechnology industry sectors. Such
21 emphasis on obtaining investment banking revenue created conflicts of interest for the
22 research analysts that resulted in the issuance of flawed research reports. This conduct was a
23 dishonest and unethical practice under N.J.S.A. 49:3-58(a)(2)(vii).
- 24 5. USBPJ failed adequately to monitor and supervise the conflicts of interest inherent in seeking
25 investment banking opportunities from companies covered by USBPJ research analysts.
26 USBPJ's violative conduct, described herein, was caused by a flawed organizational structure,

combined with inadequate supervision of the conflicts of interest. This conduct failed to meet the requirement of reasonable supervision, as required by N.J.S.A. 49:3-58(a)(2)(xi).

6. USBPJ grouped its research analysts by industry sector and those analysts worked as a team with the firm's investment bankers, who focused on the same industry sector. The majority of research analysts' compensation was paid in the form of bonuses, which for some analysts was directly tied to revenues from investment banking transactions of companies in their industry sector. In other cases, the analyst's contribution to investment banking revenue, and investment banker input into analysts' evaluations played a significant part in determining the analysts' bonuses. In certain cases, investment bankers commented in reviews that research analysts needed to become lead analysts, a reference to using their professional opinions and reports to assist the firm in obtaining the top role in investment banking transactions. As a result of these influences, certain USBPJ research analysts indirectly were motivated to obtain, retain and increase investment banking revenue.

7. In certain instances, USBPJ also provided draft research reports to potential investment banking clients during sales pitches, and this implicit promise of favorable research was an important aspect of USBPJ's attempts to gain the companies' investment banking business. In other instances, after determining to issue research, USBPJ provided company executives with draft reports, including the proposed rating and target price, and solicited comments on the report from those company executives.

8. USBPJ failed to disclose that it received compensation from the proceeds of underwriting for, among other services, providing research. It also paid proceeds of certain underwritings to other broker dealer firms to issue research on companies whose offerings it underwrote and did not ensure that such payments were disclosed.

9. Finally, USBPJ engaged in improper behavior by threatening to drop research coverage on a company if USBPJ did not receive a certain role in the company's offering of securities.

B. USBPJ's Structure and Procedures Encouraged Research Analysts to Contribute to Investment Banking Revenue, Thus Creating Conflicts of Interest

(1). Overview of USBPJ and the Financial Contribution of its Equity Capital Markets Division

10. USBPJ was founded in 1895.¹ The firm is headquartered in Minneapolis, Minnesota, and has approximately 3,100 employees, including approximately 875 financial advisers, more than 80 investment bankers, and approximately 70 research analysts. USBPJ has operations in 124 offices in 25 states throughout the country.
11. During the relevant period, USBPJ's business included retail brokerage, known as Private Advisory Services; fixed income underwriting, sales and trading (known as Fixed Income Capital Markets); and equities investment banking, syndicate, research, and institutional sales and trading (known as Equity Capital Markets or "ECM"). Thus, equity research and investment banking were in the same business line and, ultimately, reported to the same individual.
12. In 1998, USBPJ generated equity investment banking revenue of approximately \$79,500,000. That increased by 100 percent to approximately \$159,000,000 in 1999. In 2000, revenue from equity investment banking grew to approximately \$269,200,000, a 69 percent increase over 1999. In 2001, USBPJ's revenue from equity investment banking was approximately \$153,000,000. From 1999 through 2001, revenue from equity investment banking represented a significant portion of the firm's revenue, accounting for between 19 – 26 percent of the firm's total revenue.

(2). USBPJ Aligned Research Analysts With the Firm's Investment Bankers

(a). USBPJ Developed and Implemented Specific Plans To Have Research Analysts Work With Investment Bankers in an Effort to Obtain Investment Banking Business

13. During the relevant period, many companies, particularly those in the technology area, issued

¹ U.S. Bancorp acquired USBPJ Inc., as a subsidiary in 1998.

1 stock through public offerings, and there was intense competition among investment banking
2 firms to obtain this business. In order to maximize its chances to participate in these
3 offerings, USBPJ made a concerted effort to include its research analysts in its solicitation of
4 this business. This effort included developing and implementing specific marketing plans,
5 which provided for research analyst involvement in the investment banking process.

6
7 **(i). Move to the Left Strategy**

- 8 14. In May 2000, USBPJ's ECM Operating Committee amended its procedures and strategies in a
9 specific effort to gain lead manager status in more offerings. The Lead Manager is the firm
10 typically listed on the left side of the offering prospectus. Thus, USBPJ implemented a plan
11 referred to as the "Move to the Left Strategy." The ECM Operating Committee noted its
12 strong commitment to a "multi-pronged strategy" to obtain lead manager status on offerings.
13 In instructions to ECM employees, the ECM Operating Committee stated that the firm "must
14 begin to wage a war in earnest for lead manager status." That plan instituted a "line in the
15 sand" policy: The firm would not accept a syndicate position in any deal unless the firm was
16 placed in the major bracket for the underwriting.
- 17 15. The Research Department played an important role in the firm's Move to the Left Strategy.
18 Specifically, to develop a "lead manager mentality," the firm developed a "lead manager Red
19 Zone training program." That program called for the senior bankers, senior research analysts,
20 and Capital Markets personnel to "go through this special training seminar [focused] on
21 pitching for the lead on public equity transactions."

22
23 **(ii). Lead Manager Protocol**

- 24 16. In August 2000, the head of ECM's syndicate department prepared another specific effort to
25 gain additional lead managed offerings. In setting out his new "Lead Manager Protocol" to
26

1 all ECM employees, the head of the syndicate department stressed that the “formal protocol of
2 responsibilities ... will allow all of us—Investment Banking, Research, Sales, Trading and
3 Capital Markets—to share responsibility for the success of each and every lead-managed
4 offering.”

5 17. The Lead Manager Protocol, issued in August 2000, called for:

- 6 • the lead banker and lead research analyst to make a presentation to the firm’s Pre-
7 Commitment Committee before any company would be considered for an underwriting;
- 8 • the research analyst to participate in a “get-to-know-you” session with prospective
9 investment banking clients as part of a “Day at Piper” session;
- 10 • the lead banker and senior analyst to represent the prospective company client to the
11 Commitment Committee. The lead banker and “senior analyst must demonstrate continued
12 due diligence effort and must provide renewed commitment to the transaction”;
- 13 • research and sales to “set up a roadshow schedule to ensure a targeted and efficient
14 roadshow.... [and] focus on ascertaining the right accounts to see and why these are the
15 right accounts;”
- 16 • senior analysts to “provide aggressive pre-meeting preparation and post-meeting follow-up
17 to each 1-on-1 appointment;”
- 18 • senior analysts to be “available during critical parts of roadshow and pricing”; and
- 19 • the senior analyst to “coordinate with Capital Markets to sort out the aftermarket intentions
20 of each account.”

21 18. The Lead Manager Protocol described a primary function of a research analyst in
22 communicating regarding the progress of the transaction once the firm had obtained a lead
23 management role in an IPO when it stated: “Senior analyst will coordinate with Capital
24 Markets to communicate a consistent message regarding the progress of the transaction,
25 acting as a supporter of Capital Markets’ message and not as an independent filter The
26 goal of the [s]enior analyst is to reinforce reasonable and exceedable expectations.”

1 **(b). Research Analysts “Pitched” for Investment Banking Deals and**
2 **Advocated for the Issuer at Roadshows**

3 19. USBPJ’s procedures allowed for the close alignment of research analysts with investment
4 bankers in the same industry sector. ECM marketed to potential clients its research coverage,
5 market making and institutional sales as part of the firm’s efforts to obtain investment
6 banking business. USBPJ used the slogan, “One Team, One Business” in its marketing
7 materials with prospective investment banking clients. Internally, the company had
8 “transaction teams” that included investment bankers and research analysts.

9 20. The emphasis on securing investment banking business through pitches and then selling the
10 securities through roadshows gave rise to conflicts of interest for the research analysts. In
11 some instances, the research analyst became a prime contact person for the company with
12 respect to soliciting investment banking business. For example, on May 10, 1999, a research
13 analyst wrote to an officer of E-Machines, a potential investment banking client: “This is my
14 final appeal to be a part of the underwriting team. This is your deal and you control the
15 strings. All we are looking for is ten percent of the economics to participate in the
16 underwriting. This itself should be indicative of my sincere interest in your story ... In the
17 final analysis, it is less important to have bulge bracket firm as a hood ornament than it is to
18 have a quality analyst who will provide you with the support and coverage your company
19 needs.”

20
21 **(c). Research Analysts’ Participation in Pitch Meetings Was Important in**
22 **Obtaining Investment Banking Mandates**

23 21. Before USBPJ made its “pitches” to an issuer for investment banking business, the investment
24 banker, teamed with a research analyst for the appropriate sector, would make a presentation
25 to USBPJ’s Pre-Commitment Committee. This presentation included a recommendation and
26 analysis detailing why the firm should pursue an investment banking relationship with the

1 issuer. After USBPJ determined to compete for a company's investment banking business,
2 particularly in the case of an initial public offering ("IPO"), the research analyst's role was
3 influential in obtaining that business.

- 4 22. One aspect of a research analyst's function was to play a key role in the process to "pitch"
5 USBPJ to the prospective client. In certain instances, a research analyst's role at a pitch
6 meeting with an issuer was to assist investment banking personnel in convincing the issuer
7 that USBPJ should be chosen as the lead managing underwriter for the offering. A research
8 analyst's presence suggested that the Research Department would work hand-in-hand with the
9 investment bankers to provide service and support for the issuer. Research analysts routinely
10 appeared with investment bankers at pitch meetings designed to help sell USBPJ to the
11 potential client and provided information relating to their research in pitchbooks given to
12 prospective client companies.

13 **(d). In Certain Instances, Pitchbooks Provided to Potential Investment**
14 **Banking Clients Contained Mock Research Reports Impliedly Promising**
15 **Favorable Research**

- 16 23. When investment bankers and research analysts presented "pitches" to prospective investment
17 banking clients, USBPJ typically gave the prospective client a pitchbook explaining the
18 proposed services to be provided by the firm. These pitchbooks detailed, in a most favorable
19 manner, why USBPJ should be selected to underwrite the offering. In addition to providing
20 information about how USBPJ would conduct the underwriting, the pitchbooks routinely
21 included a roadmap of the amount and type of research coverage that USBPJ would provide
22 to support the company if it obtained the investment banking business. In certain instances,
23 USBPJ included a "mock" research report for the companies, containing a valuation analysis
24 and "mock" rating such as "buy," impliedly promising to the issuer that the research analyst
25 would issue a favorable research report if it selected USBPJ for the investment banking
26 business. In some instances, USBPJ's mock research reports also included a favorable

1 “mock” target price for the issuer’s stock.

2 24. For example, in August 2000, USBPJ made a pitch to be the lead underwriter for an offering
3 by TheraSense, a medical technology issuer. In preparing for the pitch, a research analyst
4 prepared a mock research report about the issuer and presented that mock report at the pitch
5 meeting. The mock research report noted in several places a proposed rating of “Strong Buy.”
6 The mock report contained very positive news about the company, claiming that its initial
7 sales of the product were “nothing short of breathtaking.” In part, as a result of that pitch, the
8 company awarded USBPJ the role of lead managing underwriter, which generated
9 underwriting fees of \$3,785,512 for the firm when the offering went effective in October
10 2001. USBPJ initiated coverage of the issuer with a “Strong Buy” recommendation shortly
11 after the offering went effective.

12 25. Finally, after USBPJ was awarded an investment banking mandate, another key function for a
13 research analyst was to provide meaningful support to the firm’s institutional investor clients
14 to ensure that an underwriting was successful. Investment bankers, research analysts and
15 company representatives generally traveled to the offices of institutional investor clients, to
16 meet with them and describe the offering and determine their interest in purchasing the stock.
17 At times, research analysts attended and provided significant assistance at these “roadshow”
18 meetings.

19
20 **(3). USBPJ Tied Research Analysts’ Compensation to Investment Banking Revenue**

21 26. During the relevant period, USBPJ compensated research analysts, in part, based on the
22 amount of investment banking revenue generated within their respective industry sector. This
23 practice created a conflict of interest for research analysts, since analysts were compensated,
24 in part, on issuing objective research and on the firm’s success in obtaining investment
25 banking business.
26

- 1 27. Specifically, USBPJ paid certain analysts a percentage of investment banking revenue and
2 institutional commissions generated by companies in their industry sector. The firm entered
3 into written agreements with at least 16 research analysts to pay them a defined percentage of
4 the revenue generated by the companies they covered. This included revenue from net
5 underwriting profits, institutional sales commissions, trading commissions, equity and debt
6 management fees, mergers and acquisition advisory fees, equity and debt private placement
7 fees, research checks, and syndicate trading profits. The defined percentage set forth in these
8 written agreements ranged from a guaranteed 7 to 15 percent of the revenues generated by the
9 companies in their industry sector.
- 10 28. Compensation for other research analysts was comprised of base salary plus a bonus.
11 Investment banking revenue was a significant factor in determining the bonus. The bonus
12 was based, in part, on investment banking revenue received from companies in the specific
13 industry sector that each analyst covered, and the level of contribution the research analyst
14 made in the effort to obtain the investment banking business. The bonus usually formed the
15 majority of a research analyst's total compensation. In 1999 and 2000, for example, more
16 than 85 percent of a typical research analysts' compensation came from the bonus, while in
17 2001 approximately 77 percent of a typical research analyst's compensation was in the form
18 of a bonus. During that time, research analysts' salaries generally ranged from \$60,000 to
19 \$250,000, while the discretionary bonuses ranged from \$75,000 to \$4,000,000.
- 20 29. In determining the amount of discretionary bonuses, supervisors in the research department
21 considered, among other things, a research analyst's contributions to the firm's success in
22 obtaining investment banking revenues. Performance evaluations of the research analysts
23 demonstrate this consideration. Research analysts received periodic reports detailing the
24 year-to-date revenues generated by their covered companies. At times, senior investment
25 bankers provided these reports to the research analysts, as well as to investment banking
26 employees, and listed the projected investment banking revenue goals for the covered

1 companies. One supervisor noted in a performance evaluation that a certain analyst should
2 work on becoming a "lead managing analyst." That expression was a reference to the lead
3 managing underwriter position that USBPJ sought in offerings because it resulted in the
4 greatest amount of control and revenue. Thus, the supervisor's expression acknowledged the
5 role that an analyst could play at USBPJ in obtaining investment banking business. For
6 example, one senior analyst received a salary of \$160,000 and a bonus of over \$3.8 million.
7 In another example, an analyst received a salary of \$130,000 and a bonus of over \$3 million.
8 In both of these instances, the bonus determination included consideration of investment
9 banking and trading revenues for companies in the industry sector covered by the analyst.

10 30. The fact that research analysts contributed to the firm's efforts to obtain investment banking
11 revenue is also evident from the personal goals set by certain research analysts. Some
12 analysts, in setting forth their goals, stated specific investment banking revenue goals and
13 listed the ongoing support of investment banking and sales as important to their continued
14 success.

15 **(4). Investment Bankers Evaluated Research Analysts' Performance and Influenced**
16 **Their Bonus Compensation**

17 31. In 2000 and 2001, investment bankers who worked on investment banking business with
18 research analysts participated in the annual performance evaluations of those research
19 analysts. Specifically, in certain instances, investment bankers completed and provided to the
20 Director of Research a "Banker Peer Review" on certain research analysts. Investment
21 bankers evaluated research analysts using specific criteria, including:

- 22 • "proactively generates and shares valuable M&A/strategic ideas;"
- 23 • "prepares for pitches and contributes to preparation of pitchbook;"
- 24 • "effective in pitches; [and] takes the aftermarket commitment seriously."
- 25 •
- 26 •

32. Thus, investment bankers provided significant input in the performance evaluation of research

analysts which, in turn, influenced the bonus compensation of those research analysts. For example, an investment banker noted in his banker peer review that a particular analyst: “needs to be proactive in pursuing fee-generating companies for his coverage list. He is very focused on big cap names that do not pay.”

33. This review process indicated to research analysts that, in part, their role was to assist the investment bankers and the firm’s investment banking clients.

(5). USBPJ Lacked Procedures and Did Not Adequately Monitor Research Analysts’ Sharing of Draft Research Reports With Issuers

34. In certain cases, prior to the dissemination of research reports, USBPJ research analysts provided copies of their draft reports to an issuer’s executives, and solicited comments and suggestions for such reports. Providing draft research reports to an issuer’s executives could potentially compromise a research analysts’ independence in that the investment banking clients may pressure the analyst to make inappropriate changes to the draft report.

35. Certain draft research reports provided to an issuer included not only the factual portions of a draft report, but also the analyst’s valuation, rating and suggested target price. In some cases, company executives were given electronic copies of the research report, and returned to the firm a “red-lined” version of the report with their comments and edits. For example, on September 27, 2001, a USBPJ research analyst sent a representative of Genta, Inc. an e-mail containing a draft report with a rating. This e-mail stated, “ Hope you are doing better. Here is a draft of our initiation note. Please review it and send me any comments you may have. Thanks...” On October 2, 2001, Genta responded to the e-mail with extensive comments on the note.

36. In other instances, USBPJ investment bankers suggested to issuer clients that research reports initiating coverage would be subject to approval by the issuer. For example, on January 11, 2001, an investment banker wrote to numerous executives at Metromedia Fiber Network, Inc.

1 (“Metromedia”) thanking them for their meeting with a USBPJ senior research analyst. The
2 banker wrote, “[The analyst] has decided to initiate coverage with a Strong Buy, our firm’s
3 highest recommendation...his research associate...will be calling you later today to request
4 help in finalizing the report. *Nothing will be published without your prior approval.*”
5 (Emphasis added). On January 26, 2001, USBPJ initiated coverage of Metromedia with a
6 “strong buy” and a \$27 price target.

7 37. On November 22, 2000, a USBPJ senior investment banker wrote to executives of Qwest
8 thanking them for an in-person meeting. The banker wrote: “We expect to initiate research
9 coverage within the next few weeks and will submit a draft of such report for your review and
10 approval prior to publication.”

11 38. Notwithstanding the potential that research analysts could be subjected to pressure by issuers,
12 USBPJ failed to have adequate procedures or controls to monitor such communications.

13 **(6). USBPJ Lacked Procedures And Controls Sufficient To Monitor The Influence of**
14 **Investment Banking on Research Analysts**

15 39. In view of the interaction between research analysts and investment banking described above,
16 USBPJ lacked adequate systems or procedures to supervise the influence that investment
17 banking opportunities had on research personnel. For example, on January 17, 2001, a
18 USBPJ senior research analyst wrote an e-mail to a junior analyst seeking input as to whether
19 he should maintain a “buy” rating on Natural Microsystems, Inc. (“NMSS”). USBPJ had
20 downgraded NMSS from “strong buy” in December 2000 based on the company’s
21 announcement that it would likely miss its earnings projections for the year. Upon the
22 company’s announcement in January 2001 that it had, in fact, not met its projections for 2000,
23 the senior analyst again evaluated the company’s rating. In response to the senior analyst’s
24 request for input, the junior analyst responded that, in his opinion, the company should stay a
25
26

1 “buy” “taking into consideration banking relationship,” but that absent such considerations he
2 would rate the stock a neutral.

3 40. On January 18, 2001, USBPJ issued a research report that maintained the previously lowered
4 “buy” rating.² The report included a lower price target than that published previously,
5 cautionary statements about NMSS’s short-term prospects and a predicted “struggle” for the
6 company’s shares during the first half of 2001. In the same research report, USBPJ lowered
7 its revenue estimates by almost one half and reduced the earnings per share to show a loss in
8 fiscal year 2001. At that time, USBPJ defined a “buy” rating as: “Expect positive price
9 appreciation over next 12 months; Solid long term company fundamentals; attractive long-
10 term valuation, though shares may be extended based on near-term parameters.” USBPJ
11 subsequently lowered its rating to “neutral” on April 12, 2001.

12 41. Moreover, USBPJ rarely issued a sell rating. During most of the review period, USBPJ had a
13 four point rating scale: strong buy, buy, neutral, and sell. More than 80 percent of the
14 research reports issued contained either “buy” or “strong buy” recommendations, with less
15 than 20 percent of the companies, on average, rated as a “neutral.” Throughout the review
16 period, USBPJ gave less than one percent of companies a “sell” recommendation. In certain
17 cases, the firm would discontinue coverage, usually without explanation, rather than drop a
18 company to a sell rating. In those cases, therefore, USBPJ had only a three point rating
19 system.

20 21 **C. USBPJ Issued Research on Two Companies That Lacked a Reasonable Basis Or Was** 22 **Imbalanced**

23 42. As to two companies, Esperion Therapeutics, Inc. and Triton Network Systems, USBPJ
24 issued research reports that lacked a reasonable basis or were imbalanced.

25 **(1). Esperion Therapeutics, Inc.**

26 ² USBPJ widely distributed its research through public services such as Thompson Financial’s First Call and on its website www.gotoanalyst.com.

- 1
2
3
4
5
6
7
8
9
10
11
12
43. In August 2000, USBPJ served as co-manager for the IPO of Esperion Therapeutics, Inc. ("Esperion") and consequently initiated research coverage of Esperion on September 5, 2000 with a "buy" rating. On January 9, 2002, a USBPJ senior research analyst stated in an e-mail to a senior investment banker: "ESPR delayed a pipeline product and completely dropped development of a second pipeline product, giving a reason that was nothing short of hokey. So it was bad news all around....Esperion has not met a single milestone that they have laid out since they went public. Everything has slipped. [Esperion's CEO] is a good scientist, an awful CEO."
44. Notwithstanding these statements, USBPJ's January 2002 industry report "Investing in Biotechnology" and research report on January 24, 2002, both reiterated the existing buy rating (now termed outperform).

13
14

(2). Triton Network Systems

- 15
16
17
18
19
20
21
22
23
24
25
26
45. In July 2000, USBPJ served as co-manager for Triton Network Systems ("Triton")'s IPO. On August 7, 2000, a USBPJ senior research analyst initiated research coverage of Triton with a "buy" rating and a \$45 price target. Soon after the IPO, shares of Triton reached a high of \$47.75, but the value of the stock quickly declined. USBPJ maintained a "buy" rating while the stock price declined to \$1 13/16 over the next eight months.
46. On March 30, 2001, the analyst issued a "blast" e-mail to institutional clients with cautionary statements about Triton due to the likely loss of a key customer, Advanced Radio Telecom, which was considering a Chapter 11 bankruptcy filing. Other than the "blast" e-mail, USBPJ did not issue a new research report directly on that information at that time. Notwithstanding this negative news, USBPJ maintained a "buy" rating. Another month passed before USBPJ disclosed in a broadly disseminated research report Triton's problems with this customer while downgrading Triton to a neutral on May 1, 2001. After two more months, when Triton

1 was trading below \$1, the research analyst told the head of USBPJ's equity research
2 department, that since the company was in bankruptcy proceedings, "we can drop now if
3 banking says ok." USBPJ discontinued coverage of Triton with a last published rating of
4 neutral.

5
6 **D. USBPJ Threatened to Drop Research Coverage of Emisphere Technologies, Inc., if it Did**
7 **Not Award USBPJ the Lead Manager Role in an Offering**

- 8 47. In September 1999, USBPJ attempted to compel Emisphere Technologies, Inc. to select it for
9 investment banking business by informing company executives that it would drop research
10 coverage of the company if it were not selected as the lead manager for an offering of
11 Emisphere's securities. USBPJ's threatening conduct undermined competition for investment
12 banking services.

13 **E. USBPJ Failed to Disclose That it Received Payments From Proceeds of Certain**
14 **Underwritings, In Part, To Publish Research Regarding The Issuer**

- 15 48. From 1999 through 2001, USBPJ received payments out of the proceeds of certain
16 underwritings to compensate the firm for services that included publishing research on the
17 issuer. These payments were made in the form of "research guarantees" or "research
18 checks." During this period, USBPJ accepted more than \$1.8 million in exchange for, among
19 other services, issuing research reports. Despite having an obligation to do so, the firm failed
20 to disclose in research reports or elsewhere that it received the payments, in part, as
21 compensation for issuing the reports. For example:

- 22 49. In June 1999, USBPJ received a \$400,000 research check in connection with a \$200 million
23 high yield debt offering in April 1999 for Just for Feet. USBPJ was not a manager on the
24 offering and did not disclose this payment in its ongoing research or elsewhere.
25
26

1 50. In July 1999, USBPJ received a \$150,000 check in connection with an offering of common
2 stock by JDS Uniphase Corp. Although USBPJ was not an underwriter in the offering, the
3 firm received the payment, in part, for continued research coverage of the company.

4 51. In March 2001, USBPJ received a \$120,000 research check in connection with an
5 underwriting that went effective in May 2001 for Comverse Technology Inc. USBPJ failed to
6 disclose in research it published on the company that it had received this compensation, in
7 part, for issuing research regarding the subject company.

8 **F. USBPJ Failed to Ensure Public Disclosure of Payments It Made from the Proceeds of**
9 **Underwritings to Brokerage Firms To Issue Research Coverage Regarding Its Investment**
10 **Banking Clients**

11 52. From 1999 through 2001, at the direction of certain issuer clients, USBPJ paid portions of
12 certain underwriting proceeds to other brokerage firms to initiate or continue research
13 coverage on issuers for which Piper served as lead or co-manager. It knew that these
14 payments were, in part, for research. USBPJ did not take steps to ensure that the brokerage
15 firms paid to initiate or continue coverage of its investment banking clients disclosed that they
16 had been paid to issue such research. Further, USBPJ did not disclose or cause to be
17 disclosed the fact of such payments.

18 53. For example, in 2000, USBPJ paid underwriting proceeds of \$100,000 to another underwriter
19 in conjunction with USBPJ's lead manager position on Onyx Pharmaceuticals' ("Onyx")
20 stock offering. While this underwriter was not invited to participate in Onyx's offering, the
21 payment was made in response to a letter dated September 22, 2000 from the underwriter
22 asking for \$300,000 in "underwriting participation" for continued research and market
23 making. A representative of the underwriter wrote, "From August 31, 1999 until August 15,
24 2000, we were the only firm in print on Onyx Pharmaceuticals and we remain a Strong Buy
25 rating." USBPJ did not ensure that this payment was disclosed to the public in its published
26 research on Onyx.

54. In April 2000, USBPJ, acting as lead manager for an offering for Buca, Inc. directed the payment of an aggregate of \$105,000 to three brokerage firms for the issuance of research. In February 2001, while assisting in another investment banking transaction for Buca, Inc., USBPJ distributed \$225,000 to other firms for their research coverage. USBPJ did not ensure that these payments were disclosed to the public.

G. USBPJ Failed to Adequately Supervise Its Research Analysts and Investment Banking Professionals

55. During the relevant period, USBPJ's management failed adequately to monitor the activities of the firm's research and investment banking professionals to ensure compliance with state securities laws and regulations. Among other things, this failure to supervise gave rise to and perpetuated the above-described violative conduct.

III.

CONCLUSIONS OF LAW

1. The Bureau of Securities has jurisdiction over this matter pursuant to N.J.S.A. 49:3-47 et seq., and more specifically N.J.S.A. 49:3-66.
2. N.J.S.A. 49:3-58(a) states that the Bureau Chief may by order deny, suspend, or revoke any registration if he finds: (1) that the order is in the public interest; and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; (vii) has engaged in dishonest or unethical practices in the securities, commodities, banking, insurance or investment advisory business, as may be defined by rule of the bureau chief; or (xi) has failed reasonably to supervise his agents if he is a broker-dealer or issuer; the agents of a broker-dealer or issuer for whom he has supervisory responsibility, or his employees who give investment advice if he is an investment adviser.

- a. Respondent USBPJ engaged in acts and practices that created and/or maintained

1 inappropriate influence by investment banking over research analysts and therefore
2 imposed conflicts of interest on research analysts. USBPJ failed to manage these
3 conflicts in an adequate and appropriate manner. This conduct was a violation of
4 N.J.S.A. 49:3-58(a)(2)(vii).

5 b. The Bureau of Securities finds that Respondent USBPJ has violated N.J.S.A. 49:3-
6 58(a)(2)(vii), as described in the Findings of Fact above, by issuing research that
7 contained opinions for which there was no reasonable basis and/or exaggerated or
8 unwarranted claims.

9 c. The Bureau of Securities finds that Respondent USBPJ inappropriately threatened
10 executives of a potential investment banking client by stating that they would drop
11 research coverage of the company if the firm was not selected as the lead manager
12 in an investment banking transaction. This conduct was a violation of N.J.S.A. 49:3-
13 58(a)(2)(vii).

14 d. The Bureau of Securities finds that Respondent USBPJ received compensation
15 directly or indirectly, from an issuer, underwriter or dealer, in part, for issuing
16 research reports, without fully disclosing the receipt or the amount of the
17 compensation. This conduct was a violation of N.J.S.A. 49:3-58(a)(2)(vii).

18 e. The Bureau of Securities finds that Respondent USBPJ, as described in the Findings
19 of Fact above, made payments for research to other broker-dealers not involved in
20 an underwriting transaction, when the firm knew that these payments were made, at
21 least in part, for research coverage, and failed to disclose or cause to be disclosed in
22 offering documents or elsewhere the fact of such payments. This conduct was a
23 violation of N.J.S.A. 49:3-58(a)(2)(vii).

24 f. The Bureau of Securities finds that Respondent USBPJ failed to establish and
25 enforce written supervisory procedures reasonably designed to ensure that analysts
26 were not unduly influenced by investment banking concerns, as required by

N.J.S.A. 49:3-58(a)(2)(xi). Despite knowledge of research analysts' complex responsibilities and conflicts of interest, Respondent USBPJ failed to implement a system to detect and insulate its research analysts from improper influence and pressure by investment banking personnel. To the contrary, Respondent USBPJ's business practices motivated research analysts to issue research that would attract and retain investment banking business.

3. The Chief of the Bureau of Securities finds the following relief appropriate and in the public interest.

IV.

ORDER

On the basis of the Findings of Fact, Conclusions of Law, and Respondent USBPJ's consent to the entry of this Order, for the sole purpose of settling this matter, prior to a hearing and without admitting or denying any of the Findings of Fact or Conclusions of Law,

IT IS HEREBY ORDERED:

1. This Order concludes the investigation by the Bureau of Securities and any other action that the Bureau of Securities could commence under the Uniform Securities Law (1997), L. 1997, c.276, N.J.S.A. 49:3-47 et seq. on behalf of the State of New Jersey as it relates to Respondent USBPJ, relating to certain research or banking practices at Respondent USBPJ.
2. Respondent USBPJ will CEASE AND DESIST from violating the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq. and will comply with the the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq., in connection with the research practices referenced in this Order and will comply with the undertakings of Addendum A, incorporated herein by reference.
3. This Order is not intended by the Chief of the Bureau of Securities to subject any Covered Person to any disqualifications under the laws of any state, the District of Columbia or

1 Puerto Rico (collectively, "State"), including, without limitation, any disqualifications from
2 relying upon the State registration exemptions or State safe harbor provisions. "Covered
3 Person" means Respondent USBPJ, or any of its officers, directors, affiliates, current or
4 former employees, or other persons that would otherwise be disqualified as a result of the
5 Orders (as defined below).

- 6 4. The SEC Final Judgment, the NYSE Stipulation and Consent, the NASD Letter of
7 Acceptance, Waiver and Consent, this Order and the order of any other State in related
8 proceedings against Respondent USBPJ (collectively, the "Orders") shall not be a ground to
9 deny, suspend or revoke the broker-dealer, agent, investment adviser or investment adviser
10 representative registration of any Covered Person pursuant to N.J.S.A. 49:3-58, shall not be
11 a ground for denial or revocation of the transactional and securities exemptions from
12 registration in N.J.S.A. 49:3-50, and shall not be a ground to issue a stop order denying
13 effectiveness to, or suspending or revoking the effectiveness of, any securities registration
14 statement pursuant to N.J.S.A. 49:3-64.
- 15 5. For any person or entity not a party to this Order, this Order does not limit or create any
16 private rights or remedies against Respondent USBPJ including, without limitation, the use
17 of any e-mails or other documents of Respondent USBPJ or of others regarding research
18 practices, limit or create liability of Respondent USBPJ or limit or create defenses of
19 Respondent USBPJ to any claims.
- 20 6. Nothing herein shall preclude the State of New Jersey, its departments, agencies, boards,
21 commissions, authorities, political subdivisions and corporations, other than the Bureau of
22 Securities and only to the extent set forth in paragraph 1 above, (collectively, "State
23 Entities") and the officers, agents or employees of State Entities from asserting any claims,
24 causes of action, or applications for compensatory, nominal and/or punitive damages,
25 administrative, civil, criminal, or injunctive relief against Respondent USBPJ in connection
26 with certain research and/or banking practices at Respondent USBPJ.

1 7. Respondent USBPJ agrees not to take any action or to make or permit to be made any
2 public statement denying, directly or indirectly, any finding in this Order or creating the
3 impression that this Order is without factual basis. Nothing in this Paragraph affects
4 Respondent USBPJ's: (i) testimonial obligations, or (ii) right to take legal or factual
5 positions in defense of litigation or in defense of other legal proceedings in which the
6 Bureau of Securities is not a party.

7 1. MONETARY SANCTIONS

8 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that:

9 1. As a result of the Findings of Fact and Conclusions of Law contained in this Order,
10 Respondent USBPJ shall pay a total amount of \$32,500,000.00. This total amount shall be
11 paid as specified in the SEC Final Judgment as follows:

- 12 a) \$12,500,000 to the states (50 states, plus the District of Columbia and Puerto Rico)
13 (Respondent USBPJ's offer to the state securities regulators hereinafter shall be called
14 the "state settlement offer"). Upon execution of this Order, Respondent USBPJ shall
15 pay the sum of \$324,168.00 of this amount to the State of New Jersey, Bureau of
16 Securities as a civil monetary penalty pursuant to N.J.S.A. 49:3-70.1, to be deposited
17 in the Securities Enforcement Fund, N.J.S.A. 49:3-66.1. The total amount to be paid
18 by Respondent USBPJ to state securities regulators pursuant to the state settlement
19 offer may be reduced due to the decision of any state securities regulator not to accept
20 the state settlement offer. In the event another state securities regulator determines not
21 to accept Respondent USBPJ's state settlement offer, the total amount of the State of
22 New Jersey payment shall not be affected, and shall remain at \$324,168.00;
- 23 b) \$12,500,000 as disgorgement of commissions, fees and other monies as specified in
24 the SEC Final Judgment;
- 25 c) \$7,500,000, to be used for the procurement of independent research, as described in
26 the SEC Final Judgment;

1 2. Respondent USBPJ agrees that it shall not seek or accept, directly or indirectly,
2 reimbursement or indemnification, including, but not limited to payment made pursuant to
3 any insurance policy, with regard to all penalty amounts that Respondent USBPJ shall pay
4 pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such
5 penalty amounts or any part thereof are added to the Distribution Fund Account referred to
6 in the SEC Final Judgment or otherwise used for the benefit of investors. Respondent
7 USBPJ further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit
8 with regard to any state, federal or local tax for any penalty amounts that Respondent
9 USBPJ shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless
10 of whether such penalty amounts or any part thereof are added to the Distribution Fund
11 Account referred to in the SEC Final Judgment or otherwise used for the benefit of
12 investors. Respondent USBPJ understands and acknowledges that these provisions are not
13 intended to imply that the State of New Jersey would agree that any other amounts
14 Respondent USBPJ shall pay pursuant to the SEC Final Judgment may be reimbursed or
15 indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or
16 may be the basis for any tax deduction or tax credit with regard to any state, federal or local
17 tax.

18
19 3. If payment is not made by Respondent USBPJ or if Respondent USBPJ defaults in
20 any of its obligations set forth in this Order, the Chief of the Bureau of Securities may
21 vacate this Order, at his sole discretion, upon 10 days notice to Respondent USBPJ and
22 without opportunity for administrative hearing.

23 **VI. GENERAL PROVISIONS**

- 24 1. This Order and any dispute related thereto shall be construed and enforced in accordance
25 with, and governed by, the laws of the State of New Jersey without regard to any choice of
26 law principles.

- 1 2. The parties represent, warrant and agree that they have received independent legal advice
2 from their attorneys with respect to the advisability of executing this Consent Order.
- 3 3. Respondent USBPJ, through its execution of this Consent Order, voluntarily waives their
4 right to a hearing on this matter and to judicial review of this Consent Order under N.J.S.A.
5 49:3-58(c).
- 6 4. Respondent USBPJ enters into this Consent Order voluntarily and represents that no
7 threats, offers, promises, or inducements of any kind have been made by the Bureau of
8 Securities or any member, officer, employee, agent, or representative of the Bureau of
9 Securities to induce Respondent USBPJ to enter into this Consent Order.
- 10 5. This Consent Order shall become final upon entry.

11 Dated this 2nd day of September, 2003.
12

13 By Order of the Chief of the Bureau of Securities

14 By: Franklin L. Widmann
15 Franklin L. Widmann
16 Chief, Bureau of Securities
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CONSENT TO ENTRY OF CONSENT ORDER BY US BANCORP PIPER JAFFRAY INC.

US Bancorp Piper Jaffray Inc. hereby acknowledges that it has been served with a copy of this Consent Order, has read the foregoing Consent Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

US Bancorp Piper Jaffray Inc. admits the jurisdiction of the Bureau of Securities, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Consent Order; and consents to entry of this Consent Order by the Bureau of Securities as settlement of the issues contained in this Consent Order.

US Bancorp Piper Jaffray Inc. states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

US Bancorp Piper Jaffray Inc. understands that the State of New Jersey may make such public announcement concerning this Consent Order and the subject matter thereof as the State of New Jersey may deem appropriate.

Secretary and
James Chooy represents that he/she is Managing Director of US Bancorp Piper Jaffray Inc. and that, as such, has been authorized by US Bancorp Piper Jaffray Inc. to enter into this Consent Order for and on behalf of US Bancorp Piper Jaffray Inc.

Dated this 20th day of August, 2003.

US Bancorp Piper Jaffray Inc.

By: [Signature]

Title: General Counsel

SUBSCRIBED AND SWORN TO before me this 20th day of August, 2003.

[Signature: Stacey L. Kline]
Notary Public

My Commission expires:

1-31-07

